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Atty. Dkt. No. 084561-0103

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mark Landesmann

Title: BUYER-DRIVEN TARGETING
OF PURCHASING ENTITIES

Appl. No.: 09/758,239

Filing Date: 01/12/2001

Examiner: Khanh H. Le

Art Unit: 3622

TRANSMITTAL OF APPELLANT'S BRIEF

Mail Stop APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

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Sir:

Transmitted herewith in connection with the above-identified application are the following:

 Appellant's Brief Small Entity status under 37 C.F.R. § 1.9 and § 1.27 has been established by a previous assertion of Small Entity status. Applicant hereby petitions for an extension of time under 37 C.F.R. § 1.136(a) for the total number of months checked below:

<input type="checkbox"/>	Extension for response filed within the first month:	\$120.00	\$0.00
<input type="checkbox"/>	Extension for response filed within the second month:	\$450.00	\$0.00
<input type="checkbox"/>	Extension for response filed within the third month:	\$1,020.00	\$0.00
<input type="checkbox"/>	Extension for response filed within the fourth month:	\$1,590.00	\$0.00
<input checked="" type="checkbox"/>	Extension for response filed within the fifth month:	\$2,160.00	\$2,160.00
	EXTENSION FEE TOTAL:		\$2,160.00
<input checked="" type="checkbox"/>	Filing brief in support of appeal	\$500.00	\$500.00
	EXTENSION FEE TOTAL:		\$2,660.00
<input checked="" type="checkbox"/>	Small Entity Fees Apply (subtract ½ of above):		\$1,330.00
	TOTAL FEE:		\$1,330.00

- [] Please charge Deposit Account No. 19-0741 in the amount of \$. A duplicate copy of this transmittal is enclosed.
- [X] A check in the amount of \$1,330.00 is enclosed.
- [X] The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date December 2, 2005

FOLEY & LARDNER LLP
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

By William T. Ellis Reg. No.
W.T. Ellis 43,438
/s/ William T. Ellis
Attorney for Applicant
Registration No. 26,874



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**PATENT & TRADEMARK OFFICE
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APPELLANT'S BRIEF UNDER 37 C.F.R. 41.37(c)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Under the provisions of 37 C.F.R. § 41.37, this Appeal Brief is being filed together with a check in the amount of \$250.00 covering the 37 C.F.R. 41.20(b)(2) appeal fee for a small entity. If this fee is deemed to be insufficient, authorization is hereby given to charge any deficiency (or credit any balance) to the undersigned deposit account 19-0741.

1. Real Parties in Interest

The real party in interest are the assignee from the inventor Mark Landesmann, Buyerleverage. See assignment attached.

2. Related Appeals and Interferences

There are no related appeals or interferences that will directly affect, be directly affected by, or have a bearing on the present appeal, that are known to appellant, the assignees, or appellant's patent representative.

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3. Status of Claims

The present appeal is directed to claims 181-223, i.e., all of the presently pending claims in this application.

4. Status of the Amendments

No amendment were filed after the final rejection.

5. Summary of Claimed Subject Matter

The present invention is a method, system and program product for facilitating the construction and use of buyer entity profiles based on various and disparate information sources and used to the benefit of the buyer entity, with active buyer entity enablement of these information sources in several embodiments. As a result of the diverse sources of data, and the innovative use of that data to the benefit of advertisers and buyer entities, the profiles generated by the present system will be more complete, and the benefits to advertisers and consumers will in many ways be greater, than those afforded by state-of-the-art systems.

As explained in the specification of our application, “[m]arketers suffer from improper targeting of their promotions and so do buyer entities. If marketers would have a better way of identifying those buyer entities with a high purchase propensity for their products and direct promotions only at them, these promotions would be significantly more lucrative. Marketers would fight for these good customers with better introductory prices and other promotions, as well as with better products and better service. They would be willing to pay or otherwise reward these customers for the right to advertise to them. A marketer who can direct her customer acquisition efforts at those buying entities who are (...) most likely to become valuable customers can afford to divert resources from less efficient and less targeted advertising channels.” The present invention facilitates this process by providing advertisers with a tool that allows them to receive information relating to the past and future purchases of their target audiences. In turn, on the receiving end of these advertisements, consumers and business buyers are wooed with more relevant, and more lucrative, offers.

Please note that all arguments to follow only relate to the particular claims at issue in this appeal and are without prejudice to claims in other patent applications. All examples given are non-limiting and for illustrative purposes only, unless indicated otherwise.

A concise explanation of the subject matter defined in the independent claims comprises for the method step of claim 181, the computer code of claim 196, the component

of claim 197 and the operation of claim 198 for identifying a distribution limit [see page 23 line 28 to page 24 line 18 , page 27 line 24 to page 28 line 16] and a different incentive function [at least page 6 line 32 to page 7 line 2, and page 28 line 16 to page 29 line 14] associated with each of a plurality of advertisers, wherein the incentive function calculates a particular number to indicate an amount or a distribution priority; An example of a distribution limit is some monetary figure, such as \$5000. An example of an incentive function might be the equation set forth on page 28 of the specification.

A concise explanation for the method step of claim 181, the computer code of claim 196, the component of claim 197 and the operation of claim 198 (however, note that claim 198 requires not “at least one,” but rather “at least three”) relating to deriving at least one score for each of a first plurality of buyer entities, wherein the at least one score is electronically calculated based on at least one of the following data associated with the buyer entity scores: see at least p.15 l.16 to p.8 l.28, and p.19 l.29 to p.20 l.11] : entry of purchase record information associated with a purchase made by the buyer entity [bloc 312 in Figure 3A; p4 lines 12 to 18, and p6 lines 12-15], a manual input performed by the buyer entity [at least p5 l28-29, p7 l3-8, p22 l23 to p23, l10], third party database information relating to the buyer entity [at least p23 l11-22], information indicating that at least one incentive has been accepted by the buyer entity [for instance, p5 l6-8], information indicating that a follow-up purchase has been made by the buyer entity [at least p5 l9-12] and comprising transaction information indicating one of the amount, the date and the location of said purchase [at least p5, l16-24, p26 l30-33 and p27 l.18-23], information regarding website visits made by said buyer entity [p9 l.4-10, p.41 l.9-16], information regarding the location of the buyer entity [at least p.36, l10-15], and information regarding television viewing associated with said buyer entity [p.38 l.18-19]; As a simple example, each buyer entity could be assigned a numerical score that is proportional to the amount of money it has spent on Macy’s products over the last year, as determined from purchase records. See page 20 of the specification. Or could be assigned a numerical score based on the number of times it has visited a given type of website.

A concise explanation of the subject matter defined for the method step of claim 181, the computer code of claim 196, the component of claim 197 and the operation of claim 198 (note that claim 198 is different from the other independent claims in that it also requires that

the incentives be “threshold-based”) for for each of a second plurality of the buyer entities, selecting a plurality of incentives, with each of the incentives associated with at least one different advertiser, based on the at least one score and the incentive function, wherein the selecting of each of the incentives includes determining an incentive level based at least in part on the incentive function associated with the advertiser who is associated with the incentive [at least page 6 line 32 to page 7 line 2, and page 28 line 16 to page 29 line 14];

An example is a level of hotel discount that ranges from \$25-\$100, with the exact discount determined using the incentive function, as set forth at page 28 of the specification.

A concise explanation of the subject matter defined in the independent claims comprises for the method step of claim 181, the computer code of claim 196, the component of claim 197 and the processor operation of claim 198 (note that claim 198 is different from the other independent claims in that it requires the distribution priority to be based on the score, but also on at least one of “a date, time, the distribution limit, a location, and previous buyer entity responses”) for electronically determining a particular distribution priority associated with each of the incentives for each of the buyer entities based at least in part on the at least one score [at least page 27, 11-23] and An example is a sequence of advertisements containing incentives, with the exact sequence presented to a particular buyer entity determined using the score of the buyer entity, as described at page 27 of the specification.

A concise explanation of the subject matter defined for the method step of claim 181, the computer code of claim 196, the component of claim 197 and the operation of claim 198 (note that claim 198 is different from the other independent claims in that it requires that the distributing of the incentives “via a plurality of different distribution channels each based at least in part on its associated distribution priority”) for causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity receiving the incentive. [at least page 27, 11-23] As an example, the sequence of advertisements with incentives could be presented in a particular advertising channel, such as interactive television, or the Internet, and for claim 198, the incentives could be offered on a plurality of different distribution channels.

Claim 198 also includes claim language relating to an interface, namely “wherein an interface provides access for the advertisers to a database of database information related

to the buyer entities, and the interface receives queries and provides the database information in response to the queries, such that decisions are capable of being made regarding the incentives based on the database information.” For this limitation, see at least [page 25, line 18 to line 28]; [page 31, line 15 to page 32 line 27]; for other elements see above.

A concise explanation for independent claim 201 is as follows:

receiving first information from each of a plurality of buyer entities comprising at least one of: at least one respective third party purchase record or information derived therefrom, and demographic information; See page 24, line 26 to page 25, line 6], [page 38, line 1-12 , and Figure 8.

receiving from each of the buyer entities second information associated with one of: at least one manual input. See [at least p5 l28-29, p7 l3-8, p22 l23 to p23, l10], at least one web-browsing input; See [p9 l.4-10, p.41 l.9-16]

electronically storing information associated with the data, comprising the first information and the second information; See [p6 l.3-6; p13 l.21; Figure 2 and associated text, in particular p15 l.12-19].

for a plurality of product or service items offered for sale, wherein each different item in the plurality of items is either manufactured or marketed or distributed or provided by a different third party advertiser in a plurality of third party advertisers, electronically making with respect to at least one of the buyer entities, based at least in part on the data, at least one decision associated with the offering of at least one from among a plurality of different incentives, with each incentive associated with at least one of the product or service items and associated with at least one of the third party advertisers, wherein there is at least one different incentive from each of a plurality of the different third party advertisers, each of the incentives offering at least one benefit in exchange for at least one action associated with a purchase of at least one of the items; See [page 10, line 11 to line 17], [page 10, line 18 to line 27], [page 12, line 24 to line 28], [page 14, line 5 to page 16, line 33], [page 25, line 18 to page 30, line 24], [page 34, line 6 to page 37, line 33].

facilitating the offering of at least one of the incentives to the buyer entity. See [page 10, line 11 to line 17], [page 10, line 18 to line 27], [page 12, line 24 to line 28], [page 14, line 5 to page 16, line 33], [page 25, line 18 to page 30, line 24], [page 34, line 6 to page 37, line 33].

6. Grounds of Rejection to be Reviewed on Appeal

a. The first issue on appeal is whether the Examiner erred in rejecting claims 181, 183, 185-188, and 192-198 under 35 USC 102 (e) as being anticipated by Day, U.S. Patent No. 6,484,146.

b. The second issue on appeal is whether the Examiner erred in rejecting claim 182 as being unpatentable under 35 USC 103 (a) in view of Goldhaber, U.S. Patent No. 5,855, 008.

c. The third issue on appeal is whether the Examiner erred in rejecting claims 184, 189, 220-223 under 35 USC 103 (a) as being unpatentable over Day, U.S. Patent No. 6,484,146.

d. The fifth issue on appeal is whether the Examiner erred in rejecting claims 191, 201-202 under 35 USC 103 (a) as being unpatentable over Goldhaber, U.S. Patent No. 5,855,008, in view of Weinblatt, U.S. Patent No. 5,515,270, and further in view of Day, U.S. Patent No. 6,484,146.

e. The sixth issue on appeal is whether the Examiner erred in rejecting claims 203-208, 209-218 under 35 USC 103 (a) as being unpatentable over Goldhaber, in view of Weinblatt, as applied to claims 201-202 and further in view of Day, U.S. Patent No. 6,484,146.

f. The seventh issue on appeal is whether the Examiner erred in rejecting claim 199 under 35 USC 103 (a) as being unpatentable over Goldhaber, in view of Weinblatt and Day, as applied to claims 201-202, and further in view of Dedrich, U.S. Patent No. 5,717,923.

7. Argument

a. 35 U.S.C. 102 rejection of claims 181, and some of the claims dependent on 181: 183, 185-188, 192-198

The Examiner rejects these claims under 35 U.S.C. §102(e) as being anticipated by Day. According to the Manual of Patent Examination Procedure a 35 U.S.C. 102 rejection

should only be made “*if no differences are found between the claimed invention and the prior art*” (MPEP 2100-21). Below we cite deficiencies of Day relative to claims 181, 196 and 197.

Claims 181, 196, 197

Day does not disclose or suggest a “distribution priority,” as required in the first, fourth and fifth elements of the claims. The examiner cites column 14, lines 52-56 and column 6, lines 57-60 as disclosing a distribution priority. However, these citations only disclose only a “Yes” or “No” decision on whether to distribute the incentive at all, based on a maximum quantity per household. But, “distribution priority” means a distribution that is prioritized. This meaning is self evident and also clear from the specification. Reviewing the primary definition of “priority” in the Websters' II New College Dictionary, Houghton Mifflin Company 1995, it recites as follows: “1. Precedence, esp. established by order of urgency or importance.” The primary definition in the same dictionary for “Precedence” is “1. The act, state, or right of preceding: Priority.” Importantly, note that any other definition for “distribution priority” will not work with the use of the distribution priority in the last step “causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity receiving the incentive.” It does not make sense within the body and context of the claim to distribute a plurality of incentives based on a distribution priority of “1” and “0” as the examiner is maintaining. One of ordinary skill in the art cannot arrive at a distribution priority for a plurality of incentives using “1”s and “0”s. Thus, Day cannot disclose or suggest to one of ordinary skill in the art the last step of “causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity receiving the incentive,” since there is no distribution priority in Day that operates among a plurality of incentives. There is only a “Yes” or a “No” decision made, without any determining of a priority within a distribution.

As noted, Day is also missing a teaching of using distribution priorities.

As per the specification as published in 2003015876 of the present invention, a use of distribution priorities is described:

[0163] A change in at least one score may also change the priority by which incentive offers are shown or "distributed" to the buying entity. Some distribution channels, such as interactive television, require that

various incentive offers (and advertisements containing these incentive offers) be prioritized to determine which incentive offers are shown first and which are shown later, and/or which are shown more prominently and which are shown less prominently, or which are shown more often.

[0164] In this context, the scores of a buying entity and other information in the stored record for that buyer entity, as well as the date and time, advertiser budget, location, and previous responses by that buyer entity to previous ads in the sequence or earlier sequences, may be used as factors to determine the priority that a particular advertisement gets within a particular distribution channel.

Advertisements may be prioritized in a manner as to maximize the likelihood that a buying entity will act on that advertisement, i.e., those advertisements that are most likely to be accepted will tend to be shown first and most prominently. With respect to some distribution channels the scores of a buying entity might be the sole determinant of the relative importance given to each of several advertisements in the channel. With respect to other channels, the scores might be used in combination with other "channel-specific" data to determine when and how a particular incentive offer is displayed to a buying entity: for instance, with respect to PDA's that are equipped with a device that pinpoints a consumer's location, the consumer might receive incentive offers depending on his scores, but also depending on whether he requests such offers at a particular point in time and which stores offering promoted merchandise are in his immediate vicinity when he requests these offers.

In claim 181, the steps of creating a distribution priority and then using that created distribution priority are set forth as follows: "electronically determining a particular distribution priority associated with each of the incentives for each of the buyer entities based at least in part on the at least one score; and causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity receiving the incentive."

These elements are also completely absent in the Day in-store coupon distribution system. Day does not disclose a distribution of coupons (or other offers) that is prioritized.

The Examiner seems to indicate that we are arguing, or have argued that the calculation of whether or not a buyer entity receives an incentive advertisement must necessarily and always precede the calculation of the distribution priority. We have not argued or claimed that this is necessary in the past, and are not claiming this now (although in a preferred embodiment, the distribution priority calculation will in fact normally occur after

the decision whether or not a buyer entity qualifies for an incentive). We agree that claim 181 does not mandate such sequence. Our argument is simply that we have clearly distinguished in the specification between the decision whether or not to distribute a particular advertisement to a particular buyer entity, on one hand, and the claimed distribution priority according to which such distribution occurs, on the other hand.

The foregoing arguments apply equally with respect to claims 196 and 197.

Claims 185, 186, 188, 192 are anticipated by Day:

The elements defined in each if these claims are not shown in Day. These elements will be discussed with respect to the omnibus claim 198 below.

Claim 193 is not Anticipated by Day:

In addition to the reasons set forth for claim 181, the limitation “and wherein an interface provides access for the advertisers to a database containing purchase record information associated with the buyer entities” is completely missing in Day.

The Examiner cites column 3 line 65 - column 4 line 31, which reads as follows:

“The supervisory computer 16 periodically downloads special offers to the store level computers. More particularly, the administrators of the supervisory computer 16 communicate with various manufacturers, and determine what targeting parameters the manufacturers want to use in making special offers. The manufacturers may wish to make special offers to all customers (broadcast special offers), or only to customers who meet certain criteria (targeted offers). For example, the manufacturer may wish to offer discounts of varying degrees to customers who have not settled on a brand and frequently switch brands. The amount of discount may vary depending on the quantity of that category of product that the customer purchases. Similarly, a manufacturer may wish of offer discounts of varying degrees to loyal customers who mostly purchase the manufacturer's products, to reward loyal customers. Or a manufacturer trying to gain market share may only wish to provide discounts to loyal customers of a competitor, or may decide to offer higher discounts to loyal customers of a competitor than to switchers.

Thus, the targeting parameters may include whether the customer is a switcher (e.g., a customer who purchases a certain brand of product sometimes, and other brands of the same category of product other times). A switcher may be defined as a customer who purchases a certain brand of product a certain percentage of the time, such as 40% of the time. The targeting parameters may include whether the customer is a loyal (e.g., a customer who purchases a certain brand of product most of the time, and other brands of the same category of product other times). A loyal customer may be defined as a customer who purchases a certain brand of product a certain percentage of the time, such as 80% of the time. The targeting parameters may include quantity parameters. For example, heavy, moderate, light, or never quantities parameters may be established.”

Clearly, the cited Day disclosure does not teach an interface with direct access of advertisers to a “database containing purchase record information associated with the buyer entities.”

Claims 194 and 195 are not Anticipated by Day:

In addition to the reasons set forth for claims 181 and 193, the limitations for these claims are not met by Day, namely, :

194. A computer-implemented advertising method as defined in claim 193, wherein the interface receives queries and provides the database information in response to the queries.

195. A computer-implemented advertising method as defined in claim 194, wherein decisions are capable of being made regarding the incentives based on the database information.

The same passage of Day quoted above for claim 193 is cited by the examiner for claim 194 and 195, which are dependent on 193. Since Day does not disclose the limitation of claim 193, clearly Day cannot disclose these elements, as discussed above.

The rejection of parallel claims 196 and 197 is traversed and objected to on the same basis than for claim 181.

Claim 198 is Not Anticipated by Day:

Day is deficient at least with respect to all deficiencies cited in our discussion of claim 181, as those elements are also present in claim 198. In addition, it is clearly deficient relative to claim 198 at least with respect to the added elements:

Day does not disclose the deriving of a score calculated based on data received from the buyer entity itself, per the claim language “deriving at least one score for each of a first plurality of buyer entities, the at least one score being electronically calculated based on data corresponding to purchase records received from the associated buyer entity.” This is a significant limitation, because it brings in the concepts of the buyer entity being able to control its profile held in the database and also inherently brings in a permission from the buyer entity to use the data, thereby eliminating a step for meeting legal requirements for permissions before certain data can be used.

Additionally, Day does not disclose the claimed interactive interface for advertisers to access and interact with a database of information on the buyer entities, as per the discussion of claim 193 above. This added limitation is recited as follows: “wherein an interface provides access for the advertisers to a database of database information related to the buyer entities, and the interface receives queries and provides the database information in response to the queries, such that decisions are capable of being made regarding the incentives based on the database information.”

Additionally, the limitations of claims 185, 186, 188, 192 and 193 are set forth in a single combination that is not disclosed by Day.

Accordingly, Day is deficient in a variety of claim elements and cannot anticipate claim 198.

b. Claim 182 is not obvious under 35 USC 103 over Day in view of Goldhaber

182. A computer-implemented advertising method as defined in claim 181, wherein the at least one score is calculated based on said data, and further comprising allowing the buyer entity associated with said data to disable the receiving of said data if said data is not received directly from the buyer entity.

The combination of Goldhaber with Day has the deficiencies listed in the above discussion of claim 181. None of the deficiencies cited there are remedied by the addition of Goldhaber.

In addition, Goldhaber does not disclose allowing the buyer entity to disable the receipt of data. Goldhaber discloses giving the consumer the ability to edit the record of purchases already made through the system that are listed in the consumer's profile, i.e., the consumer can delete the purchase records for compete purchases of “adult movies” listed in the consumer's profile. Goldhaber does not disclose any steps for allowing the buyer entity to stop any purchase data from going into the profile unless it is received directly from the buyer entity. The examiner correctly points out that Goldhaber discloses the following:

“The demographic profiles can be constructed through interest questionnaires that the consumer completes when subscribing to the service, and also through electronic tracking of his/her usage of the service (and other habits). Thus, the profiles can be dynamic, evolving with the customer's transaction history. A customer can choose to exclude any transaction (e.g., viewing of certain

material or purchasing of certain products) from his profile. Profiles can also be interactive in that a customer may edit his profile at any time to add or delete interest features, and to delete any transaction records. Thus, for example, the customer can delete historical transaction entries evidencing her purchase of an "adult" film if desired. Similarly, the customer can change her profile to express interest in seeing certain types of automobile advertisements, and then, after she has selected and purchased a new car, delete those profile entries." (Emphasis added.)

As noted above, what Goldhaber discloses here is the listing of purchases transacted with the system itself, and which the system has automatically electronically captured and placed into the consumer's profile. In Goldhaber, the consumer can remove certain transactions from his or her profile, but s/he does not have the right to disable the capturing by the system of such purchases, and the Goldhaber system could not, even with illegal use of hindsight, be retrofitted to include such a right, because the buyer entity needs to be billed for the purchases it makes within that system. Deletion of records after the fact from the buyer entity profile is different from disabling the receipt of such data in the first place. (As an aside, it should be noted that although certain transaction records might be removed from the profile of the consumer, they cannot be deleted, as a practical matter, from the Goldhaber system in their entirety, for tax and accounting and for other reasons.) Moreover, Goldhaber system does not include any identified outside sources of information. Thus, Goldhaber, whether or not combined with Day, does not disclose "allowing the buyer entity associated with said data to disable the receiving of said data if said data is not received directly from the buyer entity." This particular feature is important, because it allows the consumer to participate in the building and aggregation of his/her profile by controlling data input, which is critical to the meeting of consumer privacy concerns. Because it involves the consumer in the evaluation of these information sources, it also affects the quality of the information that is compiled about him or her.

c. Claim 189 is not obvious under 35 USC 103 over Day in view of Goldhaber

The examiner's rejection does not speak to that claim, as newly amended. Neither Day nor Goldhaber disclose a "distribution priority." Thus, there can clearly be no disclosure explaining how to alter a priority within a given distribution based on a distribution limit. Day discloses the use of quantity limits, but contains no disclosure for how such a quantity limit can be used to alter a priority within a distribution.

c. **Claim 220-223 are not obvious under 35 USC 103 over Day in view of Goldhaber**

These claims specify the distribution limit as a monetary budget limit: Day does not include a monetary budget limit, only a ‘quantity limit’ for the number of coupons that the Day system offers to customers. The following portions of applicant’s specification help define the meaning of the term budget:

“At this point, the advertiser would also input, or the system or a systems operator would interact with the advertiser to determine the tentative budget for the advertiser’s program, i.e. the total amount of money that the advertiser is intending to spend on the advertising program that is directed to the buying entities who have previously registered and submitted their purchasing histories. This budget figure could then be used as one factor to prioritize advertisements within a sequence of advertisements and to select one or a plurality of distribution channels. [...] The initial budget of the advertiser might be based on a fixed fee that is paid in exchange for a certain number of advertisements that are sent out in various ways to the buying entities (this is commonly referred to as "CPM" (cost per mille, which is the cost per one thousand advertising message sent out). Additionally or alternatively, it might be based on variable fee that depends on the number of responses from those who receive the advertisements (this is commonly referred to as "CPA", cost of action.) Note that the responses from those receiving the advertisement might be defined in several different ways and could include any or all of the following: clicks on banner ads or Emails sent, redeemed coupons, number of registrations at the site of the advertiser, number or \$ amount of trial purchases, and number or \$ amount of additional purchases over a certain time period.” [Page 23 of the specification]

Clearly, the monetary budget in the present inventive system is a dollar or other currency figure that the advertiser is willing to spend, and is different from a quantity limit. Not only are the applicable definitions and common meanings of “budget” and “quantity limit” plainly different from each other, it should also be noted that the information conveyed as part of a budget figure in the present system is functionally different from that conveyed by a simple quantity limit in the Day system, and gives the present inventive system different control parameters than a quantity limit does. Specifically, the present inventive system as defined in these claims allows for variable pricing in the course of the distribution of offers. The price for each offer that is provided to a buyer entity may vary in part based on whether or not the buyer entity responds to the offers (as per the excerpt above), and it may also vary depending on the distribution channel used, depending on the scores of the receiving buyer

entities, and based on other factors. Because the price of each unit in the present inventive system varies in the course of the dynamic distribution of offers in the present inventive system, a static quantity limit entered by the advertiser would not allow the advertiser to limit, as taught by Day, or precisely define the amount of money s/he is spending on any particular campaign.

A monetary budget limit not only allows the advertiser to have greater predictability with respect to her expenses than a quantity limit does, it also allows a system to have greater flexibility with respect to the optimal choice of distribution channel, for instance by favoring a smaller quantity of offers distributed via a more expensive distribution channel over the distribution of a larger quantity via a less expensive channel. (The selection of distribution channels based on previously submitted budget information is disclosed in the specification in blocs 318 and 320 of Figure 3A for instance), and by being able to vary the quantity of offers depending on the level of responses (see excerpt above).

Examiner does not overcome either the above deficiency, or the deficiencies of the claims on which claims 220-223 depend, nor is a combination with prior art other than Day suggested to overcome these limitations, nor is a motivation to combine cited. The control factor of a budget limit is not disclosed.

Claim 191 is not obvious under 35 USC 103 over Goldhaber, in view of Weinblatt, and further in view of Day

191. A computer-implemented advertising method as defined in claim 181, wherein each of the incentives promotes the purchase of an item for which none of the manufacture, the marketing, the distribution, the point of sale payment and the provision is carried out by the system in the ordinary course of business.

This claim has been rejected as unpatentable over Goldhaber in view of Weinblatt and Day. With respect to claim 191, neither Day nor Weinblatt remedy the deficiencies of Goldhaber with respect to claim 181.

Goldhaber is deficient as follows: The incentive function limitation that “calculates a particular number to indicate an amount or distribution priority” is missing. The “determining a particular distribution priority associated with each of the incentives,” is missing. The method step of the actual distribution of each incentive “based on its

associated distribution priority for the buyer entity" is missing. Note that these claim elements are not referenced by the examiner in her rejection of claim 191 using Goldhaber as the base reference.

Examiner admits that Goldhaber is "arguably" deficient with respect to the added element of claim 191, but then argues that Weinblatt remedies this deficiency, without citing a specific Weinblatt disclosure to that effect. In fact, the purpose of the Weinblatt system is to allow an advertiser to measure the effectiveness of his advertisements by looking at the consumer's subsequent purchase histories with that advertiser, and based on that advertiser's issued sales receipts. The entry of information into the system in Weinblatt is predicated on the issuance of receipts emanating from Weinblatt stores. The Weinblatt advertiser would not willingly cooperate with the provision of information to the system which could then be used by competitors. The purpose of Weinblatt is to measure the effectiveness of advertisements, not to advertise, much less to advertise items "for which none of the manufacture, the marketing, the distribution, the point of sale payment and the provision is carried out by the system in the ordinary course of business." No disclosure is made by Weinblatt to that effect. The reference Day is not mentioned in the rejection with respect to claim 191.

e. Claim 201 and 202 are not obvious under 35 USC 103 over Goldhaber, in view of Weinblatt, and further in view of Day

The examiner cites Goldhaber at column 8, lines 20-39 and column 7, lines 31-32 for disclosing the claim element:

"receiving first information from each of a plurality of buyer entities comprising at least one of: at least one respective third party purchase record or information derived therefrom, and demographic information."

The column 8, lines 20-39 Goldhaber citation reads as follows:

Trading Houses:

Eventually, advertising, information, and entertainment may all exist amicably side by side in a cyberspace. To handle a wide variety of different transactions, the present invention provides a "trading house"--an electronic analog of a stock exchange. This is an on-line trading "floor" where buyers and sellers (or their software agents) can actively find each other and negotiate

transactions. Initially, such transactions would probably be handled through a central server facility, but eventually the work could be spread among many local entrepreneurs who would franchise the necessary software and set themselves up as independent agents to service their community and local businesses (akin to the shopping newspapers common in most local communities). Highly targeted, localized, low-volume advertising might enable some small mom-and-pop businesses and specialized low-tech cottage industries--for example, someone who repairs antique violins--to use advertising to reach customers for the first time.

Note at the outset that what is disclosed in the foregoing paragraph is not enabled, and purely speculative, and would not enable one of ordinary skill in the art to do anything. However, more importantly, whether or not there is one system, or a plurality of independent systems for on-line trading, all of the purchases and purchase records are made within the given system. There is no disclosure of transferring purchase records across systems. For claims 201 and 202, as well as for several of the claims that depend on 201, it is important to note that there is no disclosure in Goldhaber of "receiving . . . third party purchase records." Equally important, there is no disclosure of receiving these third party purchase records "from each of a plurality of buyer entities."

The other citation made by the examiner to the Goldhaber system, is column 7 lines 31-32:

The ads would be preselected for her on the basis of a personal profile questionnaire that she has completed plus automatic tracking of her previous Internet usage.

These citations do not support the Examiner's contention that the submission of purchase records by buyer entities is disclosed in Goldhaber. Indeed, much of the effort of obtaining and processing a "consumer interest profile" described in Goldhaber would be unnecessary if the Goldhaber system would facilitate the submission of third party purchase records. This is because records are a far more reliable and comprehensive form of profiling than the manual submission of an interest and demographic profile, which forms the basis of the customization in the Goldhaber system.

The Goldhaber patent does not disclose nor suggest the capability of tracking transactions which occur outside its system, nor does it disclose even a single step that would enable a system to capture a users online transactions other than those that are transacted via the Goldhaber system itself. Nor does Goldhaber disclose or even suggest consumers capturing and submitting purchase records for profiling purposes, as described in the specification for the present inventive system. Rather, Goldhaber discloses constructing demographic profiles through "interest questionnaires that the consumer completes" (col. 6, lines 50-51), and through electronic tracking of the consumer's usage of the system itself (col. 6, lines 52-55). The limitations of these methods for gathering data have been discussed in the specification of the present patent application, in Background of the Invention.

Likewise, the above mentioned step is also not present in Weinblatt. Weinblatt is a fairly impractical system directed to monitoring consumer exposure to advertisements from television, radio and the print medium and then recording purchases made via a special machine readable record made by the store. See column 1, lines 10-16, as follows:

This invention is directed to a technique which monitors the advertisements and promotions to which consumers selected as test subjects are exposed as well as the subsequent purchases made by those consumers and, in particular, to an improved technique for collecting more data than has previously been feasible, and to correlate the purchases with the advertising and promotions.

See also column 5, line 58 - column 6, line 4, as follows:

In order to automate monitoring of the consumer on his daily routine, it is necessary to provide him/her with an apparatus that can do the requisite monitoring while not restricting his/her movement or being so obtrusive as to somehow affect the testing. This is particularly so with respect to any apparatus which monitors exposure to radio advertisements and print ads which are likely to occur away from the house in contrast to television exposure which is most likely to occur in the house. Thus, the apparatus for monitoring the radio and print media is preferably portable and is such as to be conveniently worn on the person of the consumer. For television commercials, on the other hand, it is less important because an apparatus could effectively be used which is installed in the home.

The specialized cash register used for making the machine-readable record to be given to the consumer is described at column 8, lines 4-14 and follows:

Once the advertising monitoring information has been collected and stored, it is necessary to collect information on the purchasing behavior of consumers so that the exposure to advertising can be correlated with the purchasing behavior, as explained above. Accordingly, FIG. 2 depicts details of the apparatus 11 for producing a machine-readable output 13 as a record of the purchases made by a consumer. As is explained below, record 13 is taken home by the consumer where it is inserted into a reading unit. Apparatus 11 is preferably a suitably modified cash register such as is typically found in, for example, supermarkets, department stores and drug stores.

Rewards are printed at a home unit 41 described at column 9, line 61 – column 10, line 3 as follows:

When the consumer returns home with the purchased goods and the machine-readable record 13 of the purchased goods, home unit 41 depicted in FIG. 3 is made available for use therewith. Record 13 is inserted into purchases record reader 43 which is capable of reading magnetic stripe 13b. Thus, as record 13 passes through reader 43, all of the information stored on magnetic stripe 13b is detected and outputted for storage in monitoring memory 45. Monitoring memory 45 also receives the advertising monitoring information from memory 3 in advertising monitoring system 1.

Rewards are then provided to the consumer based on, for example, the number of machine readable records 13 he has scanned into the home unit 41. See column 10, lines 52-58.

Thus, Weinblatt is directed to a technique which monitors the advertisements and promotions to which consumers selected as test subjects are exposed as well as the subsequent purchases made by those consumers and, correlates the purchases with the advertising and promotions.

However, all of this activity, namely the cooperating stores that put out the machine readable record 13, the processor and the home unit are all part of the same system that is monitoring and correlating consumer exposure to advertisements to the consumer's subsequent purchase behavior. Thus, Weinblatt does not disclose receiving third party records, i.e., "*receiving first information from each of a plurality of buyer entities comprising at least one of: at least one respective third party purchase record or information derived therefrom.*" Weinblatt's system explicitly and unambiguously depends on and begins with the "produc[tion] of a machine readable record" ... "by the retail store [the seller of the products] [abstract] "with a suitably modified cash register" (col. 8, line 13). A specialized home unit is also built and provided to the user by the operator of the Weinblatt inventive system to read this machine readable record.

Note that apart from the lack of disclosure in these to cited references, there is no motivation to combine them. Goldhaber discloses an on-line system to gain consumer attention by offering cybercoins to consumers who interact with an online advertisement. See column 5, lines 31 – column 6, lines 35. Weinblatt discloses providing stores with special cash registers that output a machine-readable record of purchases made at the store. This machine-readable record can then be inserted by the consumer into a home unit, which reads the machine-readable record and issues rewards when a purchase threshold has been received. See column 4, lines 3-58. It is not clear how one of ordinary skill in the art would modify the Goldhaber system with the teachings of Weinblatt, much less why one of ordinary skill in the art would be motivated to do so. In other words, a *prima facie* case has not been made for this claim. The entry of information into the system in Weinblatt is predicated on the issuance of specialized and purpose-specific receipts emanating from Weinblatt stores, and no advertiser is likely to willingly cooperate with the provision of such specialized receipts to the system which is then used by competitors.

f. Claims 203 and 204 rejected as obvious under 35 USC 103 over Goldhaber in view of Weinblatt, and further in view of Day is traversed

These claims depend on 201 and 202, respectively, and add the following limitation:
"wherein the at least one benefit is not normally and publicly accessible to the buyer entity or other buyer entities in the same geographic region on

terms which are at least objectively equivalent, and which do not include material conditions that are different from the at least one action.”

The Examiner admits that such preferential offers, i.e., a “benefit is not normally and publicly accessible to the buyer entity or other buyer entities in the same geographic region on terms which are at least objectively equivalent, and which do not include material conditions that are different from the at least one action,” are not “directly disclose[d]” by Goldhaber. In the rejection it is argued that Day, however. “teaches the desirability of knowing who buys from competitors so to provide competitive offers.” As explained in “Background of the Invention” of the present application, it is not the desirability of that knowledge that is at issue here, but rather what advertisers can do to acquire that knowledge. Day discloses customized offers, but not preferential offers as defined in the claim. The Day system does not teach such an offer because the Day system has no interest in encouraging the submission of consumer information, because such information is automatically generated by the Day system when a purchase is made. Day does not cite any reason for discriminating between two consumers that have the same purchase histories with the supermarket chain that uses the Day system, nor does the Day system disclose the entry or processing of data that would make such discrimination economically viable. By contrast, the present claim would allow the operator of the claimed system, or an advertiser, to discriminate between two consumers who have the same purchase history with the operator or advertiser company, by offering exclusive and preferential deals only to those consumers who are inferred to make frequent purchases with competitors. The advertiser or system operator would do this in order to acquire greater wallet share with that consumer, and lure a greater part of his or her purchasing dollars in the operator’s category to his own products, whereas no such opportunity exists with consumers who do not frequently shop with competitors. In practice, and as explained in the Background of the Invention, Day preferential offers are of necessity limited, because a distributor, such as Coca-Cola, would not look kindly if a supermarket, using the Day system, were to systematically use information gathered as the results of Coca-Cola sales to lure Coca-Cola purchasers to Pepsi with highly preferential offers.

Preferential offers as defined here are absent from Day and Goldhaber, and the awkward combination of the Day in-store system with the Goldhaber internet system would be difficult to retrofit, even with illegal use of hindsight, to include such preferential offers

because such offers would not be economically viable in the absence of comprehensive consumer purchase and purchase-related information with various retail chains that the present system exclusively provides.

Separately, the Examiner claims that Goldhaber teaches the voluntary supplying of Proof of Purchases (page 15, 2nd paragraph of the Rejection). This is not true. Goldhaber's transaction records emanate from use of the system, not from submission of proofs of purchases. See column 6, lines 50-65 of Goldhaber, "through electronic tracking of his/her usage of the service (and other habits)."

e. Claims 205 to 208 rejected over Goldhaber in view of Weinblatt, and further in view of Day is traversed

These claims dependent on 201 to 204, add the following elements:

further includes executing a forward-looking process, the forward-looking process including:

determining a function and distribution-related limit associated with at least one of the incentives based in part on information received from a forward-participating-advertiser,

receiving newly-submitted purchase records of the buyer entities with the condition precedent that the function and distribution-related limit has been determined;

automatically and electronically making a new decision associated with the offering, said new decision being based at least in part on the function, the distribution-related limit, and the newly-submitted purchase records;

distributing the incentive based at least in part on the new decision; and

halting the distributing when the distribution-related limit is met.

For a discussion of the absence of the receipt of third-party purchase records in Goldhaber, and Weinblatt, please see our discussion of claims 201 and 202. Claims 205 to 208 contain other elements not present in the prior art of record including a forward looking-process that reacts electronically and automatically to the new submission of purchase records

based on a function that has been previously determined on the basis of information received from the advertiser. In contrast, the Day kiosk reacts to the re-input of system-generated identifiable information, but it is not disclosed that it, or the computer it links to, automatically reacts to the input of new consumer information by making a decision, as explicitly set forth in the claim, which is at least partly based on the function derived from advertiser information, or that the new consumer input consists of the submission of new purchase records. We believe that the use of Day is an attempt to retrofit, with the use of hindsight, an offline in-store system that the average person versed in the prior art would not consider as a starting point, or as a building block, for the type of system described in the present invention.

The Examiner does not speak to this automatic reaction and making a decision limitations in her office action. Neither, Goldhaber nor Day discloses the entry of third party purchase record information into the database. This step is simply not present in Goldhaber: The examiner acknowledges that "data associated with the purchase of products or services for which the payment was not carried out by the system" may not be disclosed by Goldhaber, but insists on page 3 and page 6 of the office action that the receiving of at least one third party purchase record or data derived therefrom is disclosed in Goldhaber. The examiner has previously, and separately, cited only two specific references for such disclosure: col. 7, 1 31-32 references and the col. 6, 1.50-60, which are quoted as follows:

col. 6, 1.50-60:

The demographic profiles can be constructed through interest questionnaires that the consumer completes when subscribing to the service, and also through electronic tracking of his/her usage of the service (and other habits). Thus, the profiles can be dynamic, evolving with the customer's transaction history. A customer can choose to exclude any transaction (e.g., viewing of certain material or purchasing of certain products) from his profile. Profiles can also be interactive in that a customer may edit his profile at any time to add or delete interest features, and to delete any transaction records. Thus, for example, the customer can delete historical transaction entries evidencing her purchase of an "adult" film if desired. Similarly, the customer can change her profile to express interest in seeing certain types of automobile advertisements, and then, after she has selected and purchased a new car, delete those profile entries.

And, in an example citing how a user would use the Goldhaber system, Col.7 131-32: The ads would be preselected for her on the basis of a personal profile questionnaire that she has completed plus automatic tracking of her previous Internet usage.

These citations do not support the Examiner's contention that the submission of third party purchase records by buyer entities is disclosed in Goldhaber.

Indeed, much of the effort of obtaining and processing a "consumer interest profile" described in Goldhaber would be unnecessary if the Goldhaber system would facilitate the submission of third party purchase records. This is because records are a far more reliable and comprehensive form of profiling than the manual submission of an interest and demographic profile, which forms the basis of the customization in the Goldhaber system.

The Goldhaber patent does not disclose or suggest the capability of tracking transactions which occur outside its system, nor does it disclose even a single step that would enable a practitioner to capture a users online transactions other than those that are transacted via the Goldhaber system itself. Nor does Goldhaber disclose or even suggest consumers capturing and submitting third party purchase records for profiling purposes, as described in the specification for the present inventive system. Rather, Goldhaber discloses constructing demographic profiles through "interest questionnaires that the consumer completes" (col. 6, lines 50-51; note that these questionnaires as disclosed by Goldhaber do not even contain questions relating to the past purchases of consumers), and through electronic tracking of the consumer's usage of the system itself (col. 6, lines 52-55). The limitations of these methods for gathering data have been discussed in the specification of the present patent application, in Background of the Invention.

Likewise, the above mentioned step is also not present in Weinblatt: i.e., *third party purchase records are not submitted on the initiative and consent of the buyer entity*.

Weinblatt's inventive system explicitly and unambiguously depends on and begins with the "produc[tion] of a [specialized] machine readable record ... " by the retail store [the seller of the products] [abstract] "with a suitably modified cash register" (col. 8, line 13) (all emphases are added unless stated otherwise, the patent also refers to the need for retrofitting these cash registers, col 10, l.32). This cash register must include a printer which can be a conventional device used to print receipts. *However*, the output of [the] apparatus (...) *must* also generate a machine-readable record which can be read by the apparatus [further] discussed" (col 8, l.61-64) in the Weinblatt patent. A specialized home unit is also built and provided to the user by the operator of the Weinblatt inventive system to read this machine readable record. As noted

previously, these are not third party purchase records, but records generated by the store within the system.

The receiving step is also not present in Day, since there is again no submission of purchase records by the buyer, and the transaction records used in Day are sales data captured by the system at the point of sale.

e. Claims 209-212 rejected over Goldhaber in view of Weinblatt, and further in view of Day is traversed

These claims depend from different base claims, but each adds the following limitation:

“wherein the making at least one decision further includes providing access to potential-audience-information containing at least part of the data or information derived from the data to at least one of the third party advertisers via an interactive user interface, receiving audience and incentive-definition-information from the at least one of the third party advertisers, selecting output-information derived at least in part from the potential-audience-information and the audience and incentive-definition-information, presenting the output-information to the at least one of the third party advertisers, receiving parameter information from the at least one of the third party advertisers, and making the at least one decision at least in part based on the parameter information.”

A non-limiting example of the use of the system that comprises the above limitations is as follows:

A non-limiting example of the use of the system that comprises the above limitations is as follows: The owner of Bella Italia restaurant logs in on November 1, 2007 and is presented with an interactive interface designed to provide him access to information relating to potential audiences for advertising campaigns (“providing access to potential-audience-information”). He submits a query relating to an advertisement he would like to exclusively have presented to consumers in response to a specific search input (incentive-definition

information) and submits a query regarding the number of consumers who manually input the words “Italian Restaurant” into a web search query box operated by the present system, and who are known to reside or are inferred to be likely to reside in or near San Francisco (audience-definition information). The system calculates an audience estimate of approximately 364 potential San Francisco residents per month, as well as an estimate of 1250 from those likely to reside in the wider San Francisco Bay Area (“selecting output information”), and displays this information (“presenting the output information”). The restaurant owner decides he would like to distribute his advertisements to all consumers in the wider San Francisco Bay Area, and submits content for a text ad to be displayed in response to consumers likely to live anywhere in the San Francisco Bay Area submitting this search query for “Italian restaurant” during the month of November 2007 (parameter information). The restaurant owner further asks that it be displayed as the top of multiple advertisements potentially displayed (the “distribution priority”) in response to such search queries; and agrees to pay not more than \$550 (parameter information) for the advertising campaign. The system determines (makes the decision) that the Bella Italia ad is to be displayed to consumers residing in the San Francisco Bay area that enter the Italian restaurant search term in the time period November 2 to December 2, 2007.

The Examiner writes that Goldhaber discloses the above claim limitations, in col.4 lines 25-31, and in columns 19-20, but this is not true. Column 4, lines 25-31 in Goldhaber read as follows:

“The innovations provided by the present invention have the potential to turn what has historically been an uneasy and sometimes hostile stand-off between advertiser and consumer into an alliance based on mutual respect and mutual benefits. The approach provided by the present invention is based on four principles.”

The citation that the examiner makes to columns 19-20 is not clear. Nothing in those columns appears to be pertinent.

e. Claims 213-214 rejected over Goldhaber in view of Weinblatt, and further in view of Day is traversed

Claim 213 reads as follows:

213. The method as recited in claim 201, where said incentive is presented to the buyer entity on a wireless device, and where said decision is made at least in part based on location information associated with the location of the wireless device.

The examiner has taken official notice that this claim limitation in the context of either of claims 201 or 204 is obvious. Applicant traverses this statement. It is not at all obvious in the context of a system receiving third party purchase records from a plurality of buyer entities as well as either a manual input or a web-browsing input, to make a decision on the offering of an incentive based on location of the wireless device. In accordance with MPEP 2144.03, applicants traverse/challenge these official notice statements and request that each point of official notice be supported by a citation to a reference, as set forth by the MPEP Office requirements, and that a suggestion in the prior art be pointed out for a motivation to combine each of these Noticed elements to realize the claimed combination. In view of the fact that this is a three reference combination supplemented by resort to Official Notice for some of the elements, such proof is essential to nullify the use of applicant's specification as a blueprint for such a combination.

e. Claims 215-218 rejected over Goldhaber in view of Weinblatt, and further in view of Day is traversed

Each of these claims adds the following limitation to a different base claim:

215. The method as recited in claim 201, where said incentive is distributed to the buyer entity via interactive television.

The examiner has taken official notice that this claim limitation in the context of any of claims 201, 202, 203 and 204 is obvious. Applicant traverses this statement. It is not at all obvious in the context of a system receiving third party purchase records from a plurality of buyer entities as well as either a manual input or a web-browsing input, to distribute the incentive via interactive television. Note that Weinblatt monitors the consumer exposure to advertisements on the television, but does not receive incentives resulting from a decision in accordance with the present claimed process. In accordance with MPEP 2144.03, applicants traverse/challenge these official notice statements and request that each point of official notice be supported by a citation to a reference, as set forth by the MPEP Office requirements, and that a suggestion in the prior art be pointed out for a motivation to combine each of these

Noticed elements to realize the claimed combination. In view of the fact that this is a three reference combination supplemented by resort to Official Notice for some of the elements, such proof is essential to nullify the use of applicant's specification as a blueprint for such a combination.

f. Claim 219 rejected over Goldhaber in view of Weinblatt, and further in view of Day and further in view of Dedrich is traversed

219. (New) The method as recited in claim 204, further comprising calculating a price for the offering of an incentive to the buyer entity based at least in part on information stored about the buyer entity.

The rejection argues that the above additional element is comprised in the following Dedrick disclosure Col.5, lines 20-30:

"Session manager 29 transfers data and control information to and from the components of client system 12, and acts as an interface between client system 12 and metering server 14. Electronic information which is transferred to client system 12 is received by session manager 29 and forwarded to client interface 23. In one embodiment, the electronic information is forwarded to client interface 23 via content adapter 25. Content adapter 25 may then modify the electronic information, based on the end user's data stored in personal profile database 27."

The only reference to cost was found in Dedrick at column 10, line 60 – column 11, line 9, as follows:

The software tools include "cost type" and "cost value" fields that accompany each unit of electronic information. The cost type and cost value can be utilized to calculate a price that can be either credited to or debited from the end users. The fields allow the publisher/advertiser 18 to establish the manner in which the information will be charged to the end user's account. One example of a cost type is "pay per view" payment method, wherein the end user pays an associated cost each time the user consumes a unit of information. This type of payment may be desirable for information which is typically seldom consumed by the end user. Other cost types include payment on a per byte or word of information viewed by the end user, or payment for the period of time that the user consumes the information. These cost types may be desirable when the end user is accessing a database that contains, for example, corporate or individual credit information, or the drawings and text of a patent database.

The user may also subscribe to units of information, either individually, or through a group such as the employer of the end user. For example, the end user may wish to subscribe to a news database that provides the end user news information upon command for a monthly, yearly, etc. charge. The cost types may also include a one-time charge for a unit of information, wherein the end user is granted access to the unit of information for the life of the unit.

The cost types may be provided as part of a menu that can be selected by the publisher. For example, the menu may appear to the publisher as follows:

"Pay Per View"
"Pay Per Byte"
"Pay Per Time"
. . . "

The cost value is provided in a different field and may be embodied by a simple data entry by the publisher. For example, if the pay per view cost type is selected, the publisher may enter "\$1.00". If the pay per byte cost type is selected, the publisher may enter "\$0.10 per Mbyte", and so forth and so on. The tools may also allow the publisher to associate a plurality of cost types and corresponding cost values with the same content of information.

The above is a disclosure of cost based on what is viewed, or by the byte, or by time, but is not a disclosure of the claimed "*calculating a price for the offering of an incentive to the buyer entity based at least in part on information stored about the buyer entity.*" .Also the rejection does not explain how the deficiencies mentioned in our discussion of claim 204 are overcome by the prior art, nor does it give any motivation to combine, much less one that would explain why the ordinary person of skill in this art would combine such disparate references directed towards different ends and purposes.

Conclusion:

For the foregoing reasons, it is submitted that the Examiner's rejections are erroneous based on the art, and reversal of the applied rejections is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to

Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date December 2, 2005 By 

FOLEY & LARDNER LLP
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.

CLAIMS APPENDIX

181. A computer-implemented advertising method, comprising:

identifying a distribution limit and a different incentive function associated with each of a plurality of advertisers, wherein the incentive function calculates a particular number to indicate an amount or a distribution priority;

deriving at least one score for each of a first plurality of buyer entities, wherein the at least one score is electronically calculated based on at least one of the following data associated with the buyer entity: entry of purchase record information associated with a purchase made by the buyer entity, a manual input performed by the buyer entity, third party database information relating to the buyer entity, information indicating that at least one incentive has been accepted by the buyer entity, information indicating that a follow-up purchase has been made by the buyer entity and comprising transaction information indicating one of the amount, the date and the location of said purchase, information regarding website visits made by said buyer entity, information regarding the location of the buyer entity, and information regarding television viewing associated with said buyer entity;

for each of a second plurality of the buyer entities, selecting a plurality of incentives, with each of the incentives associated with at least one different advertiser, based on the at least one score and the incentive function, wherein the selecting of each of the incentives includes determining an incentive level based at least in part on the incentive function associated with the advertiser who is associated with the incentive;

electronically determining a particular distribution priority associated with each of the incentives for each of the buyer entities based at least in part on the at least one score; and

causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity receiving the incentive.

182. A computer-implemented advertising method as defined in claim 181, wherein the at least one score is calculated based on said data, and further comprising allowing the

buyer entity associated with said data to disable the receiving of said data if said data is not received directly from the buyer entity.

183. A computer-implemented advertising method as defined in claim 181, wherein the data comprises information associated with records of purchases, said purchases having been made by the buyer entity that is associated with the data.

184. A computer-implemented advertising method as defined in claim 181, wherein the at least one score is indicative of a probability that the associated buyer entity will become a customer of the advertisers.

185. A computer-implemented advertising method as defined in claim 181, wherein the incentives are distributed via a plurality of distribution channels.

186. A computer-implemented advertising method as defined in claim 181, wherein the incentives are selected using at least one threshold.

187. A computer-implemented advertising method as defined in claim 183, wherein the data further comprises at least two of: entry of purchase record information associated with a purchase made by the buyer entity, a manual input performed by the buyer entity, third party database information relating to the buyer entity, information indicating that at least one incentive has been accepted by the buyer entity, information indicating that a follow-up purchase has been made by the buyer entity and comprising transaction information indicating one of the amount, the date and the location of said purchase, information regarding website visits made by said buyer entity, information regarding the location of the buyer entity, and information regarding television viewing associated with said buyer entity.

188. A computer-implemented advertising method as defined in claim 187, wherein the data further comprises at least three of: entry of purchase record information associated with a purchase made by the buyer entity, a manual input performed by the buyer entity, third party database information relating to the buyer entity, information indicating that

at least one incentive has been accepted by the buyer entity, information indicating that a follow-up purchase has been made by the buyer entity and comprising transaction information indicating one of the amount, the date and the location of said purchase, information regarding website visits made by said buyer entity, information regarding the location of the buyer entity, and information regarding television viewing associated with said buyer entity.

189. A computer-implemented advertising method as defined in claim 181, wherein said distribution priority is also based at least in part on said distribution limit.

190. A computer-implemented advertising method as defined in claim 181, wherein said incentive function comprises a plurality of weights and scores, wherein each weight is assigned to at least one different score associated with that particular weight, and wherein for each of the incentives, said determining comprises the meshing of weights and scores, said weights being based at least in part on information associated with the advertiser associated with the incentive, and said scores being based at least in part on the data associated with the buyer entity receiving the incentive.

191. A computer-implemented advertising method as defined in claim 181, wherein each of the incentives promotes the purchase of an item for which none of the manufacture, the marketing, the distribution, the point of sale payment and the provision is carried out by the system in the ordinary course of business.

192. A computer-implemented advertising method as defined in claim 181, wherein the distribution priority is determined based on at least one of a date, a time, the distribution limit, a location, and previous buyer entity responses.

193. A computer-implemented advertising method as defined in claim 181, wherein the at least one score is calculated based at least on purchase record information associated with at least one purchase made by each of the respective buyer entities, and a manual input performed by each of the respective buyer entities, and wherein an interface

provides access for the advertisers to a database containing purchase record information associated with the buyer entities.

194. A computer-implemented advertising method as defined in claim 193, wherein the interface receives queries and provides the database information in response to the queries.

195. A computer-implemented advertising method as defined in claim 194, wherein decisions are capable of being made regarding the incentives based on the database information.

196. A computer program product embodied on a computer readable medium, comprising:

computer code for identifying a distribution limit and a different incentive function associated with each of a plurality of advertisers, wherein the incentive function calculates a particular number to indicate an amount or a distribution priority;

computer code for deriving at least one score for each of a first plurality of buyer entities, wherein the at least one score is electronically calculated based on at least one of the following data associated with the buyer entity: entry of purchase record information associated with a purchase made by the buyer entity, a manual input performed by the buyer entity, third party database information relating to the buyer entity, information indicating that at least one incentive has been accepted by the buyer entity, information indicating that a follow-up purchase has been made by the buyer entity and comprising transaction information indicating one of the amount, the date and the location of said purchase, information regarding website visits made by said buyer entity, information regarding the location of the buyer entity, and information regarding television viewing associated with said buyer entity;

computer code for, for each of a second plurality of the buyer entities, selecting a plurality of incentives, with each of the incentives associated with at least one different advertiser, based on the at least one score and the incentive function, wherein the selecting of each of the incentives includes determining an incentive level based at least in

part on the incentive function associated with the advertiser who is associated with the incentive;

computer code for determining a particular distribution priority associated with each of the incentives for each of the buyer entities based at least in part on the at least one score; and

computer code for causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity receiving the incentive.

197. A system, comprising:

a component for identifying a distribution limit and a different incentive function associated with each of a plurality of advertisers, wherein the incentive function calculates a particular number to indicate an amount or a distribution priority;

a component for deriving at least one score for each of a first plurality of buyer entities, wherein the at least one score is calculated based on at least one of the following data associated with the buyer entity: entry of purchase record information associated with a purchase made by the buyer entity, a manual input performed by the buyer entity, third party database information relating to the buyer entity, information indicating that at least one incentive has been accepted by the buyer entity, information indicating that a follow-up purchase has been made by the buyer entity and comprising transaction information indicating one of the amount, the date and the location of said purchase, information regarding website visits made by said buyer entity, information regarding the location of the buyer entity, and information regarding television viewing associated with said buyer entity;

a component, for each of a second plurality of the buyer entities, selecting a plurality of incentives, with each of the incentives associated with at least one different advertiser, based on the at least one score and the incentive function, wherein the selecting of each of the incentives includes determining an incentive level based at least in part on the incentive function associated with the advertiser who is associated with the incentive;

a component for determining a particular distribution priority associated with each of the incentives for each of the buyer entities based at least in part on the at least one score; and

a component for causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity receiving the incentive.

198. A computer-implemented advertising method, comprising:

a processor identifying a distribution limit and a different incentive function associated with each of a plurality of advertisers, wherein the incentive function calculates a particular number to indicate an amount or a distribution priority;

deriving at least one score for each of a first plurality of buyer entities, the at least one score being electronically calculated based on data corresponding to purchase records received from the associated buyer entity, the at least one score being indicative of a probability that the associated buyer entity will become a customer of the advertisers, the at least one score being electronically calculated based on at least three of entry of purchase record information associated with a purchase made by the buyer entity, a manual input performed by the associated buyer entity, third party database information relating to the buyer entity, information indicating that at least one incentive has been accepted by the buyer entity, information indicating that a follow-up purchase has been made by the buyer entity and comprising transaction information indicating one of the amount, the date and the location of said purchase, information regarding website visits made by said buyer entity, information regarding the location of the buyer entity, and information regarding television viewing associated with said buyer entity;

for each of a second plurality of the buyer entities, selecting a plurality of threshold-based incentives, each of which is associated with at least one different advertiser, based on the at least one score and the incentive function, wherein the selecting of each of the incentives includes determining an incentive level based at least in part on the incentive function associated with the advertiser who is associated with the incentive;

determining a particular distribution priority associated with each of the incentives for each of the buyer entities based on the at least one score, the distribution priority being further determined based on at least one of a date, a time, the distribution limit, a location, and previous buyer entity responses; and

causing the distributing of the incentives via a plurality of different distribution channels each based at least in part on its associated distribution priority;

wherein an interface provides access for the advertisers to a database of database information related to the buyer entities, and the interface receives queries and provides the database information in response to the queries, such that decisions are capable of being made regarding the incentives based on the database information.

199. A computer-implemented method as defined in claim 198, wherein the database information includes information received from the buyer entities and is anonymous.

200. A computer-implemented advertising method as defined in claim 181, wherein said incentive function comprises a plurality of weights and scores, wherein each weight is assigned to at least one score associated with that particular weight, and wherein for each of the incentives, said determining comprises the meshing of weights and scores, said weights being based at least in part on information associated with the advertiser associated with the incentive, and said scores being based at least in part on the data associated with the buyer entity receiving the incentive, and wherein each of the incentives promotes the purchase of an item for which none of the manufacture, the marketing, the distribution, the point of sale payment and the provision is carried out by the system in the ordinary course of business, and wherein the at least one score is calculated based at least on purchase record information associated with at least one purchase made by each of the respective buyer entities, and a manual input performed by each of the respective buyer entities, and wherein an interface provides access for the advertisers to a database containing purchase record information associated with the buyer entities.

201. A method for buyer-driven targeting by a system comprising:

receiving first information from each of a plurality of buyer entities comprising at least one of: at least one respective third party purchase record or information derived therefrom, and demographic information;

receiving from each of the buyer entities second information associated with one of: at least one manual input, at least one web-browsing input;

electronically storing information associated with the data, comprising the first information and the second information;

for a plurality of product or service items offered for sale, wherein each different item in the plurality of items is either manufactured or marketed or distributed or provided by a different third party advertiser in a plurality of third party advertisers, electronically making with respect to at least one of the buyer entities, based at least in part on the data, at least one decision associated with the offering of at least one from among a plurality of different incentives, with each incentive associated with at least one of the product or service items and associated with at least one of the third party advertisers, wherein there is at least one different incentive from each of a plurality of the different third party advertisers, each of the incentives offering at least one benefit in exchange for at least one action associated with a purchase of at least one of the items; and

facilitating the offering of at least one of the incentives to the buyer entity.

202. The method as recited in claim 201, wherein the manufacture, marketing, distribution, and providing are not carried out by the system in the ordinary course of business.

203. The method as recited in claim 201, wherein the at least one benefit is not normally and publicly accessible to the buyer entity or other buyer entities in the same geographic region on terms which are at least objectively equivalent, and which do not include material conditions that are different from the at least one action.

204. The method as recited in claim 202, wherein the at least one benefit is not normally and publicly accessible to the buyer entity or other buyer entities in the same geographic region on terms which are at least objectively equivalent, and which do not include material conditions that are different from the at least one action.

205. The method as recited in claim 201, wherein the making at least one decision further includes executing a forward-looking process, the forward-looking process including:

determining a function and distribution-related limit associated with at least one of the incentives based in part on information received from a forward-participating-advertiser,

receiving newly-submitted purchase records of the buyer entities with the condition precedent that the function and distribution-related limit has been determined;

automatically and electronically making a new decision associated with the offering, said new decision being based at least in part on the function, the distribution-related limit, and the newly-submitted purchase records;

distributing the incentive based at least in part on the new decision; and
halting the distributing when the distribution-related limit is met.

206. The method as recited in claim 202, wherein the making at least one decision further includes executing a forward-looking process, the forward-looking process including:

determining a function and distribution -related limit associated with at least one of the incentives based in part on information received from a forward-participating-advertiser,

receiving newly-submitted purchase records of the buyer entities with the condition precedent that the function and distribution-related limit has been determined;

automatically and electronically making a new decision associated with the offering, said new decision being based at least in part on the function, the distribution-related limit, and the newly-submitted purchase records;

distributing the incentive based at least in part on the new decision; and
halting the distributing when the distribution-related limit is met.

207. The method as recited in claim 203, wherein the making at least one decision further includes executing a forward-looking process, the forward-looking process including:

determining a function and distribution -related limit associated with at least one of the incentives based in part on information received from a forward-participating-advertiser,

receiving newly-submitted purchase records of the buyer entities with the condition precedent that the function and distribution-related limit has been determined;

automatically and electronically making a new decision associated with the offering, said new decision being based at least in part on the function, the distribution-related limit, and the newly-submitted purchase records;

distributing the incentive based at least in part on the new decision; and

halting the distributing when the distribution-related limit is met.

208. The method as recited in claim 204, wherein the making at least one decision further includes executing a forward-looking process, the forward-looking process including:

determining a function and distribution-related limit associated with at least one of the incentives based in part on information received from a forward-participating-advertiser,

receiving newly-submitted purchase records of the buyer entities with the condition precedent that the function and distribution -related limit has been determined;

automatically and electronically making a new decision associated with the offering, said new decision being based at least in part on the function, the distribution-related limit, and the newly-submitted purchase records;

distributing the incentive based at least in part on the new decision; and
halting the distributing when the distribution-related limit is met.

209. The method as recited in claim 201, wherein the making at least one decision further includes providing access to potential-audience-information containing at least part of the data or information derived from the data to at least one of the third party advertisers via an interactive user interface, receiving audience and incentive-definition-information from the at least one of the third party advertisers, selecting output-information derived at least in part from the potential-audience-information and the audience and incentive-definition-information, presenting the output-information to the at least one of the third party advertisers, receiving parameter information from the at least one of the third party advertisers, and making the at least one decision at least in part based on the parameter information.

210. The method as recited in claim 202, wherein the making at least one decision further includes providing access to potential-audience-information containing at least part of the data or information derived from the data to at least one of the third party advertisers via an interactive user interface, receiving audience and incentive-definition-information from the at least one of the third party advertisers, selecting output-information derived at least in part from the potential-audience-information and the audience and incentive-definition-

information, presenting the output-information to the at least one of the third party advertisers, receiving parameter information from the at least one of the third party advertisers, and making the at least one decision at least in part based on the parameter information.

211. The method as recited in claim 203, wherein the making at least one decision further includes providing access to potential-audience-information containing at least part of the data or information derived from the data to at least one of the third party advertisers via an interactive user interface, receiving audience and incentive-definition-information from the at least one of the third party advertisers, selecting output-information derived at least in part from the potential-audience-information and the audience and incentive-definition-information, presenting the output-information to the at least one of the third party advertisers, receiving parameter information from the at least one of the third party advertisers, and making the at least one decision at least in part based on the parameter information.

212. The method as recited in claim 204, wherein the making at least one decision further includes providing access to potential-audience-information containing at least part of the data or information derived from the data to at least one of the third party advertisers via an interactive user interface, receiving audience and incentive-definition-information from the at least one of the third party advertisers, selecting output-information derived at least in part from the potential-audience-information and the audience and incentive-definition-information, presenting the output-information to the at least one of the third party advertisers, receiving parameter information from the at least one of the third party advertisers, and making the at least one decision at least in part based on the parameter information.

213. The method as recited in claim 201, where said incentive is presented to the buyer entity on a wireless device, and where said decision is made at least in part based on location information associated with the location of the wireless device.

214. The method as recited in claim 204, where said incentive is presented to the buyer entity on a wireless device, and where said decision is made at least in part based on location information associated with the location of the wireless device.

215. The method as recited in claim 201, where said incentive is distributed to the buyer entity via interactive television.

216. The method as recited in claim 202, where said incentive is distributed to the buyer entity via interactive television.

217. The method as recited in claim 203, where said incentive is distributed to the buyer entity via interactive television.

218. The method as recited in claim 204, where said incentive is distributed to the buyer entity via interactive television.

219 The method as recited in claim 204, further comprising calculating a price for the offering of an incentive to the buyer entity based at least in part on information stored about the buyer entity.

220. The method as defined in claim 181, wherein the distribution limit is a monetary budget limit.

221. The computer program product as defined in claim 196, wherein the distribution limit is a monetary budget limit.

222. The system as defined in claim 197, wherein the distribution limit is a monetary budget limit.

223. The computer-implemented advertising method as defined in claim 198, wherein the distribution limit is a monetary budget limit.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.